

**Introduced by Senator Dodd**

December 5, 2016

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An act to add Section 1624.7 to the Civil Code, relating to contracts.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 33, as introduced, Dodd. Contracts for goods or services: waiver: fraud, identity theft, and wrongful use of personal identifying information.

Existing law generally regulates the formation, terms, conditions, and enforcement of contracts, including what constitutes an unlawful contract. Existing law declares all persons capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. Existing law restricts the use and enforcement of waivers of certain rights for specified contracts. Existing law makes it a crime for a person to willfully obtain personal identifying information, as defined, of another person, and use that information for any unlawful purpose, as specified.

This bill would prohibit a person from requiring a waiver of a legal right that arises as a result of fraud, identity theft, and any other act related to the wrongful use of personal identifying information as a condition of entering into a contract for the provision of goods or services. The bill would require any waiver of these rights to be knowing and voluntary, express and in writing, and not a condition of entering into the contract or a condition of providing or receiving goods or services. The bill would assign any person seeking the enforcement of a waiver of these protections the burden of proving that the waiver was knowing and voluntary and not made as a condition of the contract or of providing or receiving goods or services. The bill's provisions would apply to contracts entered into, altered, modified, renewed, or extended

on and after January 1, 2018. The bill would authorize a court to award a plaintiff enforcing her or his rights under these provisions reasonable attorney's fees.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1624.7 is added to the Civil Code, to  
2 read:

3 1624.7. (a) A person shall not require another person to waive  
4 a right described in subdivision (h) that arises as a result of fraud,  
5 identity theft, or any other act related to the wrongful use of  
6 personal identifying information as a condition of entering into a  
7 contract for goods or services.

8 (b) A person shall not refuse to enter into a contract with, or  
9 refuse to provide goods or services to, another person on the basis  
10 that the other person refuses to waive a right described in  
11 subdivision (h) that arises as a result of fraud, identity theft, or any  
12 other act related to the wrongful use of personal identifying  
13 information.

14 (c) A waiver of a right described in subdivision (h) that arises  
15 as a result of fraud, identity theft, or any other act related to the  
16 wrongful use of personal identifying information shall be knowing  
17 and voluntary, express and in writing, and shall not be a condition  
18 of entering into a contract for goods or services or of providing or  
19 receiving goods or services. This subdivision shall not affect a  
20 legal right, penalty, forum, or procedure for which a waiver is  
21 prohibited by law.

22 (d) A waiver of a right described in subdivision (h) that arises  
23 as a result of fraud, identity theft, or any other act related to the  
24 wrongful use of personal identifying information that is required  
25 as a condition of entering into a contract for goods or services shall  
26 be deemed involuntary, unconscionable, against public policy, and  
27 unenforceable. This subdivision shall not affect the enforceability  
28 or validity of any other provision of the contract.

29 (e) A person who seeks to enforce a waiver of a right described  
30 in subdivision (h) that arises as a result of fraud, identity theft, or  
31 any other act related to the wrongful use of personal identifying  
32 information shall have the burden of proving that the waiver was

1 knowing and voluntary and not made as a condition of entering  
2 into a contract for goods or services, or of providing or receiving  
3 goods or services.

4 (f) This section shall apply to any contract entered into, altered,  
5 modified, renewed, or extended on or after January 1, 2018.

6 (g) In addition to injunctive relief and any other remedies  
7 available, a court may award a plaintiff enforcing her or his rights  
8 under this section reasonable attorney's fees.

9 (h) This section applies to any legal right, including, but not  
10 limited to, the right to a penalty, remedy, forum, or procedure, and  
11 the right to file and pursue a civil action or complaint with, or  
12 otherwise notify, a state agency, public prosecutor, law enforcement  
13 agency, or any court or other governmental entity.

14 (i) For the purposes of this section:

15 (1) "Identity theft" has the same definition as in Section 1798.92.

16 (2) "Personal identifying information" has the same definition  
17 as in Section 1798.92.